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硕士学位论文

遗传资源国际合作开发的法律机制研究

Study of Legal System of International Cooperation  
of Genetic Resources

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## 内 容 摘 要

随着生物技术的长足发展,遗传资源对于创新的贡献和对人类社会持续发展的重要性日益凸显。发展中国家作为丰富遗传资源的拥有国,其遗传资源不断遭到发达国家的“生物剽窃”,从而给发展中国家和发达国家之间的关系增加了新的紧张因素。为此,《生物多样性公约》确立了遗传资源国际合作开发的“国家主权原则”、“事先知情同意原则”和“惠益分享原则”,为发达国家和发展中国家在遗传资源开发方面进行合作提供了重要的法律机制。

除前言和结语外,本文共有五章内容。

第一章介绍了遗传资源国际合作开发的现状,分析了遗传资源国际合作开发中南北矛盾的由来,提出了解决的途径,并结合实例分析了消除南北矛盾的方法——坚持《生物多样性公约》所确立的“国家主权原则”、“事先知情同意原则”和“惠益分享原则”。

第二章阐述了遗传资源国际合作开发的前提——遗传资源的归属问题,分析了遗传资源的归属原则从“人类共同遗产”原则到“国家主权原则”的变迁,强调坚持“国家主权原则”为发展中国家参与遗传资源国际合作开发奠定了基础。同时,通过对“国家主权原则”和“利益群体权利原则”之间的比较分析,论证了坚持“国家主权原则”对于保护发展中国家的遗传资源更为有利。

第三章分析了遗传资源国际合作开发的程序——事先知情同意制度,探讨了事先知情同意制度的法律原则和构成要素,分析了《遗传资源获取和公正公平惠益分享的波恩准则》中的相关规定,并从两方面对该制度的完善提出了建议。

第四章分析了遗传资源国际合作开发的惠益分享制度,指出公正公平的惠益分享是发达国家和发展中国家达到“共赢”的有效途径,分析了惠益的类型、惠益分享的原则、共同商定条件和惠益分享的实施机制,最后从两个方面对该制度的

完善提出了建议。

最后一章阐述了我国遗传资源国际合作开发法律机制的不足，分析了“国家主权原则”、“事先知情同意原则”、“惠益分享原则”对我国的借鉴意义，对完善我国遗传资源国际合作开发的法律机制提出了构想。

**关键词：**遗传资源；知情同意；惠益分享

## ABSTRACT

With the rapid development of biotechnology, genetic resources for innovative contributions and the importance of sustainable development of human society is increasingly obvious. As possessors of rich genetic resources, developing countries' genetic resources are plundered by developed countries, which called "biological piracy". This led to the development of international cooperation in genetic resources shrinking. "The principle of national sovereignty", "the principle of prior informed consent (PIC)" and "equitable benefit-sharing principles" established by CBD provide a set of law mechanisms for cooperation between developed and developing countries. In the effective functioning of the mechanisms, international cooperation in genetic resources will be a "win-win" situation.

The dissertation consists of five chapters in addition to the preface and epilogue.

The first chapter introduces the development of the status of international cooperation of genetic resources, analyses origin of the North-South conflict in the development of international cooperation of genetic resources. By analysis of examples, we show ways to eliminate conflicts between the North and South -- "the principle of national sovereignty", "prior informed consent principle" and "equitable benefit-sharing principles" established by CBD.

Chapter II explains the basis of the development of international cooperation of genetic resources -- the ownership of genetic resources, the principle of ownership of genetic resources has been changed from the "common heritage of mankind" principle to the principle of national sovereignty, upholding the principle of national sovereignty of genetic resources is very important for the participation of developing countries in the development of international cooperation of genetic resources. At the same time, through analysis of the principle of national sovereignty and the principle of the right of interest groups, we prove that the principle of national sovereignty is more favorable for the protection of genetic resources in developing countries.

Chapter III analyses the process of development of international cooperation of genetic resources-- the PIC system, explores principles and elements of the legal system of PIC, introduces the relevant provisions in "Bonn Guidelines on Access and Fair and equitable Benefit-sharing of Genetic Resources ", and makes

recommendations to improve the PIC system.

Chapter IV analyses benefit-sharing mechanism of development of international cooperation of genetic resources. Fair and equitable benefit-sharing between developed and developing countries is an effective mechanism to achieve a "win-win" situation. We analyze the benefits types, benefit-sharing principles, mutually agreed terms and implementation of benefit-sharing mechanism, and at last make recommendations to improve benefit-sharing mechanism from two aspects.

The final chapter analyses status of genetic resources conservation in China. By analysis of exploration of the "principle of national sovereignty", "prior informed consent principle" and "benefit-sharing principle", we make recommendations to improve our law system of international cooperation of genetic resources.

**Key Words:** Genetic Resources; Prior Informed Consent; Benefit-sharing

## 目 录

前 言 .....	1
第一章 遗传资源国际合作开发的现状 .....	2
第一节 遗传资源的界定及其重要性 .....	2
一、遗传资源的界定 .....	2
二、遗传资源的重要性 .....	4
第二节 遗传资源国际合作开发中的南北矛盾 .....	5
一、两种对抗使合作举步维艰 .....	5
二、消弭隔阂以实现合作共赢 .....	6
第三节 遗传资源国际合作开发案例分析 .....	7
一、植物遗传资源的国际合作开发 .....	7
二、动物遗传资源的国际合作开发 .....	8
三、人类遗传资源的国际合作开发 .....	9
四、案例分析与总结 .....	10
第二章 遗传资源国际合作开发的国家主权原则 .....	12
第一节 遗传资源归属原则的变迁 .....	12
一、从“人类共同遗产”原则到国家主权原则 .....	12
二、国家主权原则的含义 .....	14
第二节 国家主权原则的国际法渊源 .....	15
一、《关于自然资源永久性主权的宣言》 .....	15
二、《生物多样性公约》 .....	16
三、《粮食和农业植物遗传资源国际公约》 .....	16
四、《遗传资源获取和公正公平惠益分享的波恩准则》 .....	17
第三节 国家主权原则和利益群体权利原则 .....	17
一、利益群体权利原则的含义 .....	17
二、国家主权原则与利益群体权利原则的冲突及调和 .....	19
三、建立利益群体补偿制度 .....	20



<b>第三章 遗传资源国际合作开发的事先知情同意制度</b>	23
第一节 事先知情同意制度的缘起	23
第二节 事先知情同意制度的原则	24
一、确定性和清晰性原则	25
二、最低成本原则	25
三、有限限制原则	25
四、双重同意原则	26
第三节 事先知情同意制度的构成要素	26
一、同意权要素	26
二、知情权要素	29
三、时间要素	29
四、《波恩准则》的相关规定	30
第四节 关于完善事先知情同意制度的几点建议	31
一、事先知情同意权的冲突及其解决	31
二、事先知情同意的拒绝授予及其救济途径	34
<b>第四章 遗传资源国际合作开发的惠益分享制度</b>	35
第一节 惠益分享制度的缘起	35
第二节 惠益分享的原则	37
一、公平和公正原则	37
二、发展中国家优先原则	37
第三节 共同商定条件	38
第四节 惠益分享制度的实施机制	39
一、惠益分享制度的立法机制	39
二、惠益分享制度的契约机制	40
第五节 关于完善惠益分享制度的几点建议	41
一、惠益分享制度与知识产权制度的冲突及其解决	41
二、惠益分享制度的内部阻滞因素及其解决	42
<b>第五章 我国遗传资源国际合作开发法律机制的完善</b>	45
第一节 我国遗传资源国际合作开发法律体系的不足及其完善	45

一、法律体系的不足 .....	45
二、法律体系的完善 .....	47
<b>第二节 我国遗传资源国际合作开发管理机构的缺失及其完善 .....</b>	<b>49</b>
一、管理机构的缺失 .....	49
二、管理机构的完善 .....	50
<b>结 语 .....</b>	<b>52</b>
<b>参考文献 .....</b>	<b>53</b>

厦门大学博硕士论文摘要库

## CONTENTS

<b>Preface .....</b>	<b>1</b>
<b>Chapter 1 Development of International Cooperation of Genetic Resources .....</b>	<b>2</b>
<b>Subchapter 1 Definition and Importance of Genetic Resources .....</b>	<b>2</b>
Section 1 Definition of Genetic Resources .....	2
Section 2 Importance of Genetic Resources .....	4
<b>Subchapter 2 North-south Conflicts in the International Cooperation of Genetic Resources .....</b>	<b>5</b>
Section 1 Barrier in International Cooperation .....	5
Section 2 Eliminate Barrier in International Cooperation to Achieve Win-win Cooperation .....	6
<b>Subchapter 3 Analysis of Cases of International Cooperation in Genetic Resources .....</b>	<b>7</b>
Section 1 Development of International Cooperation in Plant Genetic Resources .....	7
Section 2 Development of International Cooperation in Animal Genetic Resources .....	8
Section 3 Development of International Cooperation in Human Genetic Resources .....	9
Section 4 Analysis and Summary of Cases .....	10
<b>Chapter 2 Principle of National Sovereignty in the International Cooperation of Genetic Resources .....</b>	<b>12</b>
<b>Subchapter 1 Changes of Principle of the Ownership of Genetic Resources ...</b>	<b>12</b>
Section 1 Principle of "Common Heritage of Mankind" Changes to Principle of National Sovereignty .....	12
Section 2 Meaning of the Principle of National Sovereignty .....	14
<b>Subchapter 2 Sources of International Law of Principle of National Sovereignty .....</b>	<b>15</b>
Section 1 Declaration on the Permanent Sovereignty over Natural	

Resources.....	15
Section 2 Convention on Biological Diversity.....	16
Section 3 International Treaty on Plant Genetic Resources for Food and Agricultur .....	16
Section 4 Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits .....	17
<b>Subchapter 3 Principle of National Sovereignty and Principle of Interest Groups .....</b>	<b>17</b>
Section 1 Meaning of the Principle of Interest Groups .....	17
Section 2 Reconciliation of Conflicts between Principle of National Sovereignty and Principle of Interest Groups .....	19
Section 3 Establish System of Compensation of Interest Groups .....	20
<b>Chapter 3 PIC system in the International Cooperation of Genetic Resources .....</b>	<b>23</b>
<b>Subchapter 1 Origins of the PIC system .....</b>	<b>23</b>
<b>Subchapter 2 Principles of the PIC system .....</b>	<b>24</b>
Section 1 Principle of Certainty and Clarity .....	25
Section 2 Principle of Minimum Cost .....	25
Section 3 Principle of Limited Restrictions .....	25
Section 4 Principle of Double Consent .....	26
<b>Subchapter 3 Elements of the PIC system .....</b>	<b>26</b>
Section 1 Right to Consent .....	26
Section 2 Right to Information .....	29
Section 3 Time Element .....	29
Section 4 Relevant Provisions of "Bonn Guidelines" .....	30
<b>Subchapter 4 Some Suggestions on Improving the PIC System .....</b>	<b>31</b>
Section 1 Resolution of Conflict between the Rights of Prior Informed Consent.....	31
Section 2 Legal Remedy of Refusing to Grant Prior Informed Consent .....	34
<b>Chapter 4 Benefit-Sharing system in the International Cooperation of Genetic Resources .....</b>	<b>35</b>
<b>Subchapter 1 Origins of Benefit-Sharing system .....</b>	<b>35</b>

<b>Subchapter 2</b>	<b>Principles of Benefit-sharing .....</b>	<b>37</b>
Section 1	Principle of Fairness and Impartiality .....	37
Section 2	Principle of Giving Priority to Developing Countries .....	37
<b>Subchapter 3</b>	<b>Mutually Agreed Terms .....</b>	<b>38</b>
<b>Subchapter 4</b>	<b>Implementation Mechanisms of the Benefit-sharing System .....</b>	<b>39</b>
Section 1	The Legislative Mechanism of Benefit-sharing System .....	39
Section 2	Contract Mechanisms of Benefit-sharing System .....	40
<b>Subchapter 5</b>	<b>Some Suggestions on Improving the Benefit-sharing System .....</b>	<b>41</b>
Section 1	Resolution of the Conflicts between Benefit - sharing System and the Intellectual Property System .....	41
Section 2	Settlement of Internal Block in Benefit - sharing System .....	42
<b>Chapter 5</b>	<b>Deficiency and Improvement of the Legal mechanism of International Cooperation of Genetic Resources in China .....</b>	<b>45</b>
<b>Subchapter 1</b>	<b>Deficiency and Improvement of the Legal System of International Cooperation of Genetic Resources in China .....</b>	<b>45</b>
Section 1	Deficiency of the Legal System .....	45
Section 2	Improvement of the Legal System .....	47
<b>Subchapter 2</b>	<b>Deficiency and Improvement of the Administrative Institutions of International Cooperation of Genetic Resources in China .....</b>	<b>49</b>
Section 1	Deficiency of the Administrative Institutions .....	49
Section 2	Improvement of the Administrative Institutions .....	50
<b>Epilogue .....</b>		<b>52</b>
<b>Bibliography .....</b>		<b>53</b>

厦门大学博硕士论文摘要库

## 前 言

21 世纪是生物技术的世纪，生物技术的发展离不开宝贵的生物遗传资源。随着生物技术的迅猛发展，生物遗传资源作为一国宝贵的自然资源，成为影响人类生存和社会经济可持续发展的重要战略性物资。它不仅在解决粮食、健康和环境问题方面发挥着重要的作用，而且其在商业上的使用更会产生巨大的经济价值。因此，生物遗传资源已经成为各国竞相争夺的目标。

但是，遗传资源的分布和生物技术开发与应用水平之间存在的不对称状况，却影响了生物遗传资源的开发利用。由于地理原因，遗传资源主要分布在生物技术相对落后的发展中国家；而遗传资源的主要利用者是科技先进、遗传资源匮乏的发达国家及其生物技术公司。因此，只有开展遗传资源开发的国际合作，南北之间取长补短，遗传资源的经济价值才能得到合理、有效的利用。如果发达国家无视发展中国家的利益要求，实施遗传资源的“生物剽窃”行为，必将遭到发展中国家的强烈抵制；如果发展中国家拒绝与发达国家的合作，不仅自己的优势不能得到充分的利用，而且自己应有的利益也不能得到有效保护。

所以，构建一套有效的法律机制，促进发达国家和发展中国家之间在遗传资源开发方面的国际合作，以实现南北“共赢”结果，这是当前国际社会的普遍愿望。有鉴于此，本文将对遗传资源国际合作开发的法律机制作一粗浅的探讨，以期抛砖引玉。



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